

GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR DEPARTMENT

Labour Dispute :

Industrial Dispute between the workmen and the management of Bangalore North and South Taluk Agricultural Produce Co-operative Marketing Society Ltd., 11, Misson Road, Bangalore-27.

Award of the Presiding Officer, Labour Court, Bangalore, published.

(1) Letter No. 2100/74-75, dated 4th March 1975 from Shri P. Srinivasacharya, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 28th day of February 1975

Present :

Shri P. Srinivasacharya, B.A., LL.B.,
Presiding Officer

Reference No. 107 of 1973

First Party.—

L. Shivalingaiah, 121, Avalahally, G.E.F. Post, 5th Mile, Bangalore-26.

Vs.

Second Party.—

The Management of Bangalore North and South Taluk Agricultural Produce Cooperative Marketing Society Limited, 11, Mission Road, Bangalore-27.

Reference.— Government Order No. SWL 94 LLD 73, dated 31st October 1973.

AWARD

1. The State Government in their order No. SWL 94 LLD 73, dated 31st October 1973 have referred an industrial dispute existing between the above named parties to this Court for adjudication on the points of dispute noted below:—

“I Are the management of Bangalore North and South Taluk Agricultural Produce Co-operative Society Ltd., No. 11, Mission Road, Bangalore-27, justified in terminating the services of Sri L. Shivalingaiah with effect from 1st February 1970 ?

II If not, to what relief is the said workman entitled ?”

2. The first party filed his claim statement on 28th February 1974 saying that he joined the services of the second party in 1965 and was in service till his services were terminating on 1st February 1970. He was a clerk getting Rs. 230 per month. He was on leave from 17th October 1969 and for sometime he was admitted as an inpatient in the Bowring Hospital and immediately after his health was improved he came to the society on 28th April 1970 to perform his duties. To his surprise, he was informed that his services were terminated with effect from 1st February 1970 and he was served with the notices dated 31st December 1969 and 29th January 1970. He was also issued a certificate dated 30th April 1970. Thereafter he got issued a notice through his advocate on 1st August 1970, but no reply was received. Then he raised an industrial dispute which ultimately ended in this reference. He submits that the termination of the service of first party by way of retrenchment is invalid and unsustainable in law. He put in six years of continuous service when the said illegal retrenchment took place. The conditions in Section 25 of the Industrial Disputes Act are mandatory and that the second party has not complied with while effecting retrenchment. There was no enquiry before termination and

termination was effected in violation of principles of natural justice. The reasons given by the second party in the notice dated 31st December 1969 were not correct in as much it was not impossible for the second party to continue the business except at a loss as stated by employer. The principle of 'last come, first go' was violated. It is a colourable exercise of power in as much as what the employer could not have done directly has done it indirectly. One Sri G. Subba Reddy, a junior to first party, was also retrenched but later on he was taken back to duty without giving opportunity to the first party workman and also a number of workmen were appointed subsequent to his retrenchment. The first party has not been paid his salary for October 1969 and his increments have not been paid though the same are sanctioned. Hence the order of retrenchment passed by the second party is invalid and co-operation. He prays to set aside the said order and reinstate him in his former post with continuity of service, back wages and other consequential benefits.

3. The second party filed its rejoinder on 4th June 1974 saying that this Court has no jurisdiction to adjudicate upon the alleged dispute since II Party is a co-operative society registered under the Karnataka State Co-operative Societies Act and therefore the reference be rejected as not maintainable for want of jurisdiction. Without prejudice to this contention, it is stated that the reference is regarding the "justification for terminating the services" and the question of retrenchment or otherwise has not been referred. Hence, the various allegations that the retrenchment is illegal, invalid, etc., are irrelevant and beyond the scope of the reference. The question of compensation or following the procedure in Section 25(g) and 25(h) are extraneous to the order of reference and cannot be enquired into in the present reference. The termination of the worker is discharge simpliciter. This is evident from the fact that the management had exercised their right to discharge their employee after giving a month's notice and in the instant case Sri Shivalingiah's services were terminated with one

month's notice. The second party was not satisfied with the work of the said employee who was employed as movement clerk. The said employee had committed misconduct as movement clerk in the movement of Milo. Further II party was not in a position to wait indefinitely for the return to duty of Shivalingaiah who had gone on medical leave. The nature of illness, namely 'Pulmonary Tuberculosis' from which the said Shivalingaiah was afflicted with, was such that it should require a long period for complete cure. Besides the said illness was contagious and thus allowing him to work without his being cured of the illness was risky and detrimental to the interests of the other employees of the II party. In addition the II party was incurring continuing losses. Hence II Party decided to discharge Shivalingaiah with one month's notice. The I Party workman was getting Rs. 163-50 at the time of termination and not Rs. 230 as alleged. The second party denied all other allegations and prayed to reject the claims of I Party in the reference.

4. In the reply statement the first party reiterating the contention taken in the claims statement has stated that the termination of the workman was by way of retrenchment. It falls within the definition of retrenchment as defined in Section 2(oo) of the Industrial Disputes Act.

5. The following issues have been framed :

1. Whether II Party proves that it was justified in terminating the services of First Party from 1st February 1970 ?

2. Whether II Party proves that this Court has no jurisdiction ?

3. To what relief I Party is entitled ?

4. Whether retrenchment as alleged by I Party is beyond the scope of this reference?

6. On behalf of the II Party one N. Karigowda, Secretary of II Party, has been examined as M.W. 1. His evidence is to the effect that he knows the I Party through the records. Ex. M. 1 is the letter of application of the I Party for appointment. Ex. M. 2 is the appointment order. Ex. M. 3 is the order of promotion as a Clerk. Ex. M. 4 is the note of the then Secretary that there were shortage of stock recoveries of the I Party. Ex. M. 5 is the letter of the I Party dated 19th November 1966 undertaking to make good of the shortages. Ex. M. 6 is another letter of similar nature. Ex. M. 7 is the notice issued to the I Party to make good to the shortages. Ex. M. 8 is the letter of I Party asking for time for 3 days to make good of the shortages. Ex. M. 9 is the notice issued to the I Party to return the advances. Ex. M. 10 is the letter from I Party reporting to duty after break in the service. Ex. M. 11 is the copy of the note from the then President granting leave for the period of suspension. Ex. M. 12 is the final notice issued to I Party to make good of the shortages. Ex. M. 13 is the service register of the I Party. Ex. M. 13(a) is the note regarding the appointment. Ex. M. 13(b) is regarding promotion. Ex. M. 13(c) is regarding the suspension. Ex. M. 13(d) is the conversion of suspension period into earned leave. Ex. M. 13(e) is the resolution terminating the services of for misconduct, etc., Ex. M. 13(f) is the Presidents order on the representation of the I Party for reconsidering the order of termination. Ex. M. 14 is the copy of the certificate sent by I Party while making application for reconsidering the case of termination. Exhibits M. 1, M. 5, M. 6, M. 7, M. 8, M. 9 M. 10, M. 12 and M. 14 bear the signature of I Party. I Party applied for 2 days leave, i.e., on 29th and 30th October 1969. Then he extended the leave for another 15 days. Thereafter neither he applied for leave nor he attended the office till April 1970. The I Party's services were therefore terminated for long absence, misconduct and he was suffering from T. B. as per the certificate Ex. M. 14. They had discharged I Party by offering to pay one month's pay. Even now II Party is

ready to pay one months pay deducting all the advances received by him. The I Party was an attender and his promotion was as a Movement Clerk.

7. In cross-examination M.W. 1 has stated that that he is working in the Society from August 1971. He has no personal knowledge about the termination of the I Party. He added whatever is gathered from records, he has deposed. The contents of the counter-statement were correct. He does not remember whether any chargesheet has been served upon I Party alleging certain misconducts. Also he does not know whether any enquiry has been held in respect of those misconducts. He had appeared for the management before the conciliation officer and signed the proceedings on behalf of the management. Conciliation file is marked as Ex. W. 1. On Ex. M. 10 nothing has been written stating that there is a break in service. He has no personal knowledge of the shortages in 1966-67 relating to I Party. Ex. M. 13(f) was written after termination. In Ex. M. 13(e) there is a reference to the resolution of the Board of Director dated 5th December 1969. He has not looked into the resolution dated 5th December 1969 and he does not know the contents of the resolution. Ex. M. 13(e) does not bear the seal of the society and Secretary seal. He is not aware that M. 13(e) was written subsequent to I Party's termination. Exhibits W2 and W3 are the receipts issued by the society. Ex. W. 4 was issued by the then Secretary dated 31st December 1969. Ex. W. 5 dated 29th January 1970 was issued by the Secretary. Ex. W. 6 dated 30th April 1970 was also issued by the Secretary. Exhibits W. 7 and W. 8 are the representations. He does not know Ex. W. 8 is received by the management or not since it does not bear the management seal for acknowledgment. Ex. W. 9 is the Lawyer notice and he does not know whether any reply is sent to W. 9. Ex. W. 10 is the Annual report of the Society. I Party was terminated with effect from 1st February 1970 and he does not remember if the II Party has given one month's notice prior to termination. Except W. 5, II Party has not written any letter to I Party regarding the com-

compensation. Except medical certificate produced by I Party, he is not personally aware as to whether I Party was on leave due to sickness. He does not know if Exhibits W. 4 and W. 5 have been personally handed over to I Party when he came after his recovery from Bowring Hospital on 28th April 1970. The certificate issued on 30th April 1970 as per Ex. W. 6 is correct. One Subba Reddy was also terminated along with Shivalingiah, I Party. One S. Narayana is the present store keeper. He does not know whether juniors to I Party have been subsequently reappointed. Ex. W. 11 is the Annual report of 1971-72. Ex. 11(a) is the Audit observation at page 35. Shivalingiah's salary for the month of October amounting to Rs. 136 was not disbursed.

8. The I Party workman, Shivalingiah got himself examined as W.W. 1 and has stated that he went on sick leave from 19th October 1969. He applied for 10 days leave along with doctor certificate. He was taking treatment, but as there was no recovery he had applied for more leave for treatment. Then he entered Bowring Hospital as inpatient and took treatment for months. After discharge he went to report for duty. He does not remember the date. After seeing the records, he said he went to society on 28th April 1970. He received Ex. W. 4 and W. 5. He was told that society was running under loss and therefore they were retrenching the staff with effect from 1st February 1970, and his services were retrenched on 1st February 1970. He asked for a certificate. They gave him a certificate on 30th April 1970 as per Ex. W. 6. He learnt that Ex. W. 4 and W. 4 were sent by post and returned as "not found during delivery time." After that he represented his case as per Ex. W. 7 and W. 8 and got issued lawyer notice as per Ex. W. 9. Ex. W. 12 is the application sent to the Labour Officer. He found one Subbareddy, junior to him, was working in the society. The society had not paid his earned wages for October 1969 and no compensation had been paid for his retrenchment. M/s. J. Sarangapani, M. S. Babajan, Mukanda Raju and G. Subba Reddy who were juniors to him, were retained in service. Before retrenching the employees the society had not put up seniority list in the

notice board nor they had intimated their respective seniority position. He was quite healthy after recovering from sickness. The shortages in the transit were inevitable. This was verified by the Directors and Secretary and they found it correct.

Therefore without holding any enquiry, he had been reinstated. That pertains to 1966 and that case had been closed long back. He has put in continuous service. He says his retrenchment was illegal ; no enquiry had been held against the alleged misconduct spoken to by M.W. 1. Therefore, he prays for his reinstatement without continuity of service and full back wages.

9. In cross-examination, W.W. 1 has stated that he does not have any document to show that he extended the leave for 15 days and that he enclosed a medical certificate. After 15 days he sent another application for extension of 20 days leave. He admits that after that 20 days he did not ask for any extension of leave and for about 6½ months he did not present himself to the society. He does not know whether any notice was sent to him before termination his service. He knows the meaning of retrenchment. His retrenchment is illegal because the management had not consider seniority and juniority question before retrenchment. He volunteered that his juniors had been re-appointed. He asserts that he is not employed in Janaradhana Silk House on Avenue Road and he does not know there is such a shop. He denied the suggestion that his services have been terminated when he did not come to duty after receiving Rs. 70 and when he produced the certificate that he was suffering from T.B.

10. In re-examination W.W. 1 has stated that between 16th October 1969 and 28th April 1970 the management has not addressed any letters denying his leave nor calling for his explanation regarding his absence.

11. *Issue No. 2.*—I shall take up Issue No. 2 first as it relates to jurisdiction of this Court. Our Hon'ble High Court in Kunnimellihalli Dodda Pramanand Prathami Pattin Vyavasaya Sahakari Sangh Ltd., *vs.* Shivappa Gundappa Surad (reported in 1972(2) Mys. L.J. 327), following the authoritative declaration of the law by the Hon'ble Supreme Court has held that a dispute raised by a Secretary of Society who has been dismissed, is not a matter touching the business of the society and the dispute does not fall within the scope of S. 70 of the Mysore Co-operative Societies Act, 1959. Therefore, I hold this Court has jurisdiction to adjudicate upon this reference. Accordingly, I answer Issue No. 2 against the II Party and in favour of the I Party.

12. *Issues Nos. 1 and 4.*—I shall take up the consideration of Issues Nos. 1 and 4 together as they are interconnected.

13. It is contended on behalf of the II Party that as it could be revealed from the evidence of the I Party workman himself that he applied for leave on 19th October 1969 did not report for duty till 28th April 1970 along with a medical certificate in which it was stated that he required 15 days rest. The termination was on the basis of continued ill-health and as such the termination of the I Party by II Party was justified and it is not retrenchment as per the observations of our Hon'ble High Court in Peirce, Leslie & Co. Ltd., *vs.* Rama Molly (reported in 1965 II LLJ 41), wherein it is observed as follows :—

“So, what becomes clear from this definition is that, if the service of a workman is terminated on the ground of continued ill-health, such termination is no retrenchment and therefore, no retrenchment compensation is claimable under S. 25F of the Industrial Disputes Act and none under S. 15 of the Payment of Wages Act.”

14. On the other hand, the learned advocate for the I Party relying upon the II Party's notice dated 31st December 1969 and termination order dated 29th January

1970 (Exhibits W. 4 and W. 5 respectively) submitted that it was a clear case of retrenchment as per the resolution of the Board of Directors and it is an after thought to say that it was a termination on the ground of continued ill-health. He further submitted that II Party was not aware of the illness of the I Party when it had taken the decision to retrench some of the employees on the ground of surplus labour. He attached the retrenchment order of the II Party as invalid for having not complied with the provisions of Section 25F of the Industrial Disputes Act. In the connection he relied upon the observations of the Supreme Court in *Management of M/s. Willcox Buckwell India Ltd., vs. Jagannath and others* (reported in AIR 1974 SC 1166), wherein it is observed as follows :—

“....If the reason, which the management itself gave, was that the termination of the services was on account of surplus labour, there is no escape from the conclusion that the concerned workmen were retrenched and that could not have been done without giving them the benefits provided by the relevant provisions of the Act. As that was not done, the Labour Court was fully justified in ordering their reinstatement.”

He further read the Termination Notice dated 31st December 1969 (Ex. W. 4) and strenuously argued that this cannot be anything less than retrenchment. Ex. W. 4 Termination Notice dated 31st December 1969 reads as follows :—

“The following temporary officials of the society are hereby informed that the Board of Management, while taking stock of the financial position of the society in its meeting dated 5th December 1969, have noted with concern that the society has been working under loss and that as a measure to cut down the items of expenditure, it resolved to reduce the staff of the society. Accordingly and also in view of the unsatisfactory work of these officials, it further resolved to terminate the services of Smt. G. Pushpaveni, Sriyuths : G. Subba Reddy, L. Shivalingaiah and G. Kempe Gowda by giving a month's notice.

Notice is hereby given to these officials that their services will be terminated after the expiry of one month from the date of the service of the notice."

15. Let me consider the first argument of the learned advocate for the II Party as to whether it was a termination on the ground of continued ill-health. As could be seen from the evidence on record, the I Party went on leave on 19th October 1969. That leave was sanctioned. Thereafter he got himself admitted in Bowring Hospital on 30th January 1970 (as per Exhibit M-14) and went to report for duty on 28th April 1970 when he was told that his services have already been terminated. In the month of October 1969 when first Party went on leave it was not confirmed that he was suffering from a disease which was contagious and not likely to be cured in a short period. It is just after one and half months on his going on leave that the Board of Directors have met and taken a decision to retrench Smt. G. Pushpayeni, Sriyuths: G. Subba Reddy, L. Shivalingaiah and G. Kempe Gowda as per Exhibit W-4 on the ground that the "society has been working under loss". This clearly shows that the plea now sought to be taken by the Second Party that the First Party was terminated on the ground of continued ill-health, is not correct. It clearly appears to be an after-thought taking advantage of the medical certificate produced by the First Party when he wanted to join duty in the month of April 1970. This finds support also from the Termination order, dated 29th January 1970 wherein it is not mentioned that First Party's services have been terminated on the ground of continued ill-health.

16. The second plea taken by the Second Party is that the services of the First Party were terminated as his work was unsatisfactory. This is tried to be supported by the evidence of the Secretary of the Second Party (MW-1) who has stated that First Party has committed misappropriation to the tune of Rs. 4,128.95 (as per Exhibit M-4)

and that he was suspended on 24th December 1966 and thereafter when he submitted his apology it was accepted and he was reinstated on 12th January 1967 as per Exhibit M-11) it is seen that no enquiry regarding this misappropriation has been held by the Second Party and no finding was given, no punishment was imposed and he was once again allowed to work as per the order, dated 30th January 1968 (Exhibit M-11). This is clearly an indication of the fact that Second Party never considered this act of the First Party as misconduct and a ground for termination of the services of the First Party which was only in the year 1970 as referred to above. So this plea which is sought to be taken now that First Party's services were terminated on the ground of misconduct and unsatisfactory work is also fit to be rejected as an after-thought.

17. The third plea taken by the Second Party is that the services of the First Party were terminated in terms of the contract as he was only a temporary worker. This is also incorrect as per the Service Records Exhibit M-13 produced by the Second Party. The First Party submitted an application for appointment on 27th February 1964 (as per Exhibit M-1). He was appointed as Attender on 23rd January 1965 as per Exhibit M-2. He was promoted as Clerk with effect from 1st July 1965 as per Exhibit M-3. He was suspended from 24th December 1966 and once again reinstated on 12th January 1967 treating the period of suspension from 24th December 1966 to 11th January 1967 as leave. From 1st February 1970 he was terminated as per Exhibit W-5. When First Party was first appointed as Attender and promoted as Clerk, the plea taken by the Second Party that First Party was only a temporary worker is without any foundation. The First Party was not a temporary worker on 1st February 1970 when his service were terminated. Therefore, this plea which is no sought to be taken by the Second Party, is also cannot be accepted.

18. It is evidence from the records that the termination of the First Party on 1st February 1970 was a clear case of retrenchment without following the mandatory provisions

of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. The Supreme Court in (1) *Workmen of Subong Tea Estate vs. Subong Tea Estate* (reported in 1964 I LLJ 333), 92 *Bombay Union of Journalists and others vs. State of Bombay* and another (reported in 1964 I LLJ 351) and (3) *National Iron and Steel Co., vs. State of West Bengal* (reported in 1967 II LLJ 23), has observed as follows :

“That being so, we must hold that the retrenchment of eight workmen, being invalid in law, cannot be said to have terminated the relationship of employer and employee between the vendee, respondent 2 and the eight workmen concerned. They are accordingly entitled to reinstatement with continuity of service; they would also be entitled to recover their full wages for the period between the date of the retrenchment and the date of their reinstatement.” (1964 I LLJ 333 at 342).

“It would be noticed that this payment has to be made at the time of retrenchment, and this requirement again provides a safeguard in the interests of the workman ; he must be given one month’s notice or wages in lieu thereof and he must get retrenchment compensation as prescribed by clause(b). The object which the legislature had in mind in making these two conditions obligatory and in constituting them into conditions precedent is obvious. These provisions have to be satisfied before a workmen can be retrenched.” (1964 I LLJ 351 at page 357).

“As there was no compliance with Section 25 we need not consider the other points raised by the learned counsel. This conclusion receives support from the observations of this Court in *Bombay Union of Journalists and others vs. State of Bombay* and another.” (1967 II LLJ 23 at page 29).

As such, the retrenchment of First Party was invalid and the First Party is liable to be reinstated with suitable back wages.

19. The learned counsel for the Second Party argued that if this case is considered as a case of retrenchment, this Court has no jurisdiction to examine the same which is beyond the scope of the reference, because reference is only to consider whether the termination of the First Party is justified or not and this Court cannot traverse beyond the terms of reference. Mr. Krishniah, learned advocate for the First Party, relying upon the definition of 'retrenchment' under the Industrial Disputes Act, submitted that retrenchment is also a termination and reference is wide enough to cover even the case of retrenchment. Section 2 (oo) of the Industrial Disputes Act reads as follows :

"(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman ; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf ; or

(c) termination of service of a workman on the ground of continued ill-health ; "

In view of this definition, there is considerable force in the argument of Shri S. Krishniah. The reference is wide enough to consider the case of retrenchment which is also a termination of service.

20. Assuming that this is not a case of retrenchment, there is no evidence on behalf of the Second Party to show that it was justified in terminating the services of the First Party with effect from 1st February 1970 for any other valid reason. As I have already pointed out, this could not have been a termination in terms of contract. If it was a dismissal on the ground of misconduct, obviously no enquiry has been held and it cannot be upheld. Viewed from any angle, I am compelled to answer the reference that the Second Party

was not justified in terminating the services of the First Party with effect from 1st February 1970. Accordingly, I answer Issues Nos. 1 and 4 against the Second Party and in favour of the First Party.

21. *Issue No. 3.*—It therefore follows that the First Party is liable to be reinstated with continuity of service. So far as the back wages are concerned, there has been lot of delay in receiving this reference after the termination of the First Party on 1st February 1970. The reference is received on 2nd November 1973. Taking all the facts and circumstances of the case into consideration, I am of the opinion that 50 per cent of the back wages would meet the ends of justice. Hence my Award.

AWARD

22. In the result, the management of Bangalore North and South Taluk Agricultural Produce Co-operative Society Ltd., No. 11, Mission Road, Bangalore -27, were not justified in terminating the services of Sri L. Shivalingaiah with effect from 1st February 1970. The First Party workman, Sri L. Shivalingaiah, is entitled to the relief of reinstatement with continuity of service and 50 per cent of his back wages. In the circumstances of the case, the parties are directed to bear their own costs.

P. SRINIVASACHARYA,
Presiding Officer,
Labour Court, Bangalore.

“ Copy ”

P. Srinivasacharya,
Presiding Officer,
Labour Court, Bangalore.

Order No. SWL 69 LLA 75, Bangalore,

dated 22nd March 1975.

S. O. 955.—

WHEREAS by State Government Order No. SWL 94 LLD 73, dated 31st October 1973 the Industrial Dispute between the workmen and the management of Bangalore North and South Taluk Agricultural Produce Co-operative Marketing Society Ltd., was referred to the Labour Court, Bangalore for adjudication.

AND, WHEREAS the Labour Court, Bangalore has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Dispute Act, 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above in the *Karnataka Gazette*.

By Order and in the name of the Governor of Karnataka,

K. MYLARAPPA,

*Under Secretary to Government,
Social Welfare and Labour Department.*